

**Letter of Findings: 01-20140571
Individual Income Tax
For the Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana resident was required to pay state adjusted gross income tax because the salary received from her private-sector employer constituted "wages" subject to tax and because participation in the state's income tax was not voluntary.

ISSUES

I. Individual Income Tax - Wages as Income.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-3.5(a); IC § 6-3-1-8; IC § 6-8.1-5-1(c); I.R.C. § 61(a); I.R.C. § 62; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lacey v. Ind. Dept. of Revenue, 939 N.E.2d 936 (Ind. Tax Ct. 2011); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); United States v. Connor, 898 F.2d 942 (3d Cir. 1990); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007 (9th Cir. 1988); Coleman v. Commissioner of Internal Revenue, 791 F.2d 68 (7th Cir. 1986); United States v. Koliboski, 732 F.2d 1328 (7th Cir. 1984).

Taxpayer argues that money paid to her by her employer does not constitute "wages" for purposes of Indiana individual income tax.

II. Individual Income Tax - Voluntary Compliance.

Authority: IC § 6-8.1-11-2; Helvering v. Mitchell, 303 U.S. 391 (1938); United States v. Gerads, 999 F.2d 1255 (8th Cir. 1993); McLaughlin v. United States, 832 F.2d 986 (7th Cir. 1987); McKeown v. Ott, No. H 84-169, 1985 WL 11176 (N.D. Ind. Oct. 30, 1985).

Taxpayer maintains that she did not volunteer to pay income taxes.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who filed a 2013 individual income tax return. Accompanying that return was an IRS Form 4852, "Substitute for Form W-2, Wages and Tax Statement." On the form, Taxpayer indicated that she had been unable to obtain a correct form W-2 from her employer. Taxpayer stated that the Form 4852 "rebutts the characterization of non-taxable payments to me as reportable 'wages.'"

The Indiana Department of Revenue ("Department") rejected Taxpayer's submission and adjusted the Taxpayer's return to reflect as "wages" the money paid to Taxpayer. As a result of the adjustment, the Department assessed additional adjusted gross income tax.

Taxpayer disagreed with the Department's decision and submitted a protest to that effect. The matter was assigned to the Hearing Officer. An administrative hearing was scheduled to allow Taxpayer the opportunity to explain her position. That hearing was conducted by telephone during which Taxpayer represented herself. This Letter of Findings results.

I. Individual Income Tax - Wages as Income.

DISCUSSION

Taxpayer argues that the business for which she works mischaracterized the money paid to her as "wages," that she was not an "employee" of the business, but that the amounts withheld by the business were correct. In effect, Taxpayer seeks refund of the money withheld by the business for which she works on the grounds that she works "in the private-sector for a private-sector company."

As in all such cases, it is the Taxpayer's responsibility to establish that a tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

The Indiana Adjusted Gross Income Tax Act defines "adjusted gross income," in the case of individuals, as the term is defined in I.R.C. § 62 with certain limitations specific to Indiana. IC § 6-3-1-3.5(a). Thus "adjusted gross income" is, "in the case of an individual, gross income minus . . . [certain] deductions." I.R.C. § 62(a). Similarly, the Indiana Act incorporates the definition of "gross income" as found in I.R.C. § 61(a). IC § 6-3-1-8. Therefore, "gross income" consists of "all income from whatever source derived . . ." I.R.C. § 61(a) (Emphasis added).

Taxpayer's arguments are somewhat ambiguous but what appears to be the underlying contention - that a salary paid by a private, non-governmental organization is exempt from income tax - does not survive scrutiny. The Internal Revenue Code's definition of "gross income" as "income from whatever source derived . . ." is as clear and unambiguous a statement as anything likely to be found in either the Internal Revenue Code or the Indiana tax code.

Both federal and state courts have consistently, repeatedly, and without exception determined that individual wages - whether received from the government, the District of Columbia, corporations, or private entities - constitute income subject to taxation. *United States v. Connor*, 898 F.2d 942, 943 (3d Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); *Wilcox v. Commissioner of Internal Revenue*, 848 F.2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); *Coleman v. Commissioner of Internal Revenue*, 791 F.2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); *United States v. Koliboski*, 732 F.2d 1328, 1329 n.1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages - or salaries - are not taxable.") (EMPHASIS IN ORIGINAL).

In addressing the question raised by Taxpayer, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United States Supreme Court and federal circuit courts, and this Court's opinion . . . all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax." *Snyder v. Indiana Dept. of State Revenue*, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000).

Taxpayer's belief, that her compensation is not subject to Indiana's adjusted gross income tax because she works for and is compensated by a "private-sector" company, is erroneous.

FINDING

Taxpayer's protest is denied.

II. Individual Income Tax - Voluntary Compliance.**DISCUSSION**

Taxpayer claims that participation in the state's individual income tax is voluntary and she no longer wishes to pay state tax. Taxpayer's assertion is apparently based on IC § 6-8.1-11-2 which provides in part as follows:

The general assembly makes the following findings . . . (3) The Indiana tax system is based largely on voluntary compliance. (4) The development of understandable tax laws and the education of taxpayers concerning the tax laws will improve voluntary compliance and the relationship between the state and

taxpayers. (Emphasis added).

Taxpayer's conclusion is frivolous. In describing the nature of the complimentary *[sic]* federal tax system, the Supreme Court has explained:

In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil. *Helvering v. Mitchell*, 303 U.S. 391, 399 (1938).

Taxpayer's fundamental contention - that Indiana depends on its citizens' voluntary compliance with the tax laws - is undeniable. Indeed, the state also depends on its licensed drivers to drive on the right side of the road. However, that does not mean that failure to comply with the law is without predictable consequences. In *United States v. Gerads*, 999 F.2d 1255, 1256 (8th Cir. 1993), the court held that the assertion that the payment of income taxes is voluntary "clearly lack[ed] substance." "The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation, but despite [appellant's] protestation to the contrary, has been repeatedly rejected by the courts." *McLaughlin v. United States*, 832 F.2d 986, 987 (7th Cir. 1987). "[A]rguments about who is a 'person' under the tax laws, the assertion that 'wages are not income', and maintaining that payment of taxes is a purely a voluntary function do not comport with common sense - let alone the law." *McKeown v. Ott*, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985). Such arguments "have been clearly and repeatedly rejected by this and every other court to review them." *Id.* at *1.

Taxpayer's argument - that participation in or payment of state income tax is voluntary - is without merit and, as noted by the Indiana Tax Court in *Lacey v. Ind. Dept. of Revenue*, 939 N.E.2d 936, 940 (Ind. Tax Ct. 2011), clearly "frivolous."

FINDING

Taxpayer's protest is denied.

SUMMARY

The Department rejects Taxpayer's argument that wages received from her employer do not constitute taxable income. The Department also rejects Taxpayer's assertion that participation in or payment of state income tax is "voluntary."

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